

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE TENNESSEE  
REGULATORY AUTH.

\*02 FEB 11 PM 3 07

OFFICE OF THE  
EXECUTIVE SECRETARY

IN RE: COMPLAINT OF XO TENNESSEE, INC.  
AGAINST BELLSOUTH TELECOMMUNICATIONS,  
INC.

DOCKET NO. 01-00868

COMPLAINT OF ACCESS INGEGRATED  
NETWORKS, INC. AGAINST BELLSOUTH  
TELECOMMUNICATIONS, INC.

Deposition of:

KATHLEEN FINN (By Phone)

Taken on behalf of ITC^DELTACOM

January 14, 2002

VOWELL & JENNINGS, INC.  
Court Reporting Services  
328 Washington Square Building  
222 Second Avenue North  
Nashville, Tennessee 37201  
(615) 256-1935

1   **APPEARANCES:**  
2   FOR ITC^DELTACOM:  
3         HENRY WALKER  
4         Attorney at Law  
5         Nashville, Tennessee  
6         and  
7         NANETTE EDWARDS  
8         Attorney at Law  
9         Huntsville, Alabama  
10   FOR BELLSOUTH TELECOMMUNICATIONS, INC.:  
11         PATRICK TURNER (BY PHONE)  
12         Attorney at Law  
13         Atlanta, Georgia  
14   FOR THE OFFICE OF THE STATE ATTORNEY GENERAL:  
15         CHRIS ALLEN  
16         Attorney at Law  
17         Nashville, Tennessee  
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I N D E X

WITNESS: KATHLEEN FINN

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1           The deposition of KATHLEEN FINN,  
2 taken on behalf of ITC^DELTACOM, on the 14TH  
3 day of January, 2002, in the offices of Boulton,  
4 Cummings, Conners & Berry, Suite 1500, 414  
5 Union Street, Nashville, Tennessee, for all  
6 purposes under the Tennessee Rules of Civil  
7 Procedure.

8           The formalities as to notice,  
9 caption, certificate, et cetera, are waived. All  
10 objections, except as to the form of the  
11 questions, are reserved to the hearing.

12           It is agreed that James L. Vowell,  
13 being a Notary Public and Court Reporter for the  
14 State of Tennessee, may swear the witness, and  
15 that the reading and signing of the completed  
16 deposition by the witness are waived.

17  
18  
19           \* \* \*

20           KATHLEEN FINN  
21 was called as a witness, and after having been  
22 first duly sworn, testified follows:  
23  
24  
25

1                   E X A M I N A T I O N

2   BY MR. WALKER:

3   Q.           State your name for the record, please,  
4   and where you work.

5   A.           My name is Kathleen Finn, and I work at  
6   BellSouth Small Business Services.

7   Q.           Would you spell "Kathleen," please?

8   A.           K-A-T-H-L-E-E-N.

9   Q.           Okay. And what is BellSouth Small  
10   Business Services?

11   A.           It's the business unit that supports  
12   and provides products and services, sells  
13   products and services to its Small Business  
14   Services customers.

15   Q.           How are Small Business customers  
16   defined? I mean is there a minimum or a  
17   maximum?

18   A.           There is not a minimum for Small  
19   Business customers, and I am not that familiar  
20   with the criteria on how high the Small  
21   Business customer goes.

22   Q.           Okay.

23   A.           However, it's based upon a mix of --  
24   number of lines as well as total bills revenue.

25   Q.           Okay. And what is your job title

1 within the Small Business Services area?

2 A. I'm senior director, sales operations.

3 Q. For what territory are you responsible?

4 A. I'm not responsible for a particular

5 territory. I have responsibility for sales

6 support for the inbound channels, and

7 previously I had responsibility for third-

8 party vendors.

9 Q. Was your -- first of all, is your

10 current duty -- are you a regionwide person?

11 A. Yes, I am.

12 Q. And how long have you had your current

13 job title?

14 A. About a year and three months.

15 Q. And prior to that you said you were in

16 charge of third-party what?

17 A. Third-party vendors.

18 Q. And when did you cease doing that?

19 A. In November of 2001.

20 Q. Okay. I misunderstood your earlier

21 answer. I thought you said you had had your

22 new job for more than a year?

23 A. I have my existing -- I have had my

24 existing job for a year and three months. The

25 third-party vendor part of my job which was

1 about 10 percent of my job was moved to another  
2 organization.

3 Q. To which organization?

4 A. To the outbound organization.

5 Q. Do you know why that was moved?

6 A. The move was because of an organiza-  
7 tional realignment where we combined all of our  
8 inbound functions under one vice president and  
9 all of our outbound functions under one vice  
10 president.

11 Q. Who heads the outbound organization  
12 now?

13 A. Sam Hastings.

14 Q. H-A-S-T-I-N-G-S?

15 A. H-A-S-T-I-N-G-S.

16 MR. WALKER: Thanks.

17 Patrick, do you have the sales  
18 offer we were talking about earlier?

19 MR. TURNER: Still waiting on it,  
20 Henry.

21 BY MR. WALKER:

22 Q. Ms. Finn, when you were working with  
23 third-party vendors would that have included  
24 calls made by Berry Direct?

25 A. Yes, it did.

1 Q. Would that have included calls by Berry  
2 Direct throughout the region or just in certain  
3 states?

4 A. It was throughout the region.

5 Q. Could you describe to whom those calls  
6 were made?

7 A. The outbound calling program by Berry  
8 Direct was for a variety of Small Business  
9 customers, and we called customers based upon a  
10 list that we used from Marketing.

11 Q. Okay. Would these be -- would these  
12 include customers not currently being served by  
13 BellSouth?

14 A. Yes, it does.

15 Q. Were you targeting any particular group  
16 of customers?

17 A. We had programs where we would target a  
18 group of customers.

19 Q. How familiar were you with the  
20 BellSouth Select program?

21 MR. TURNER: Henry, I just want to  
22 give you the opportunity, if you wanted to  
23 clarify, if you were talking Tennessee or  
24 regionwide with that prior question.

25 MR. WALKER: I'm assuming all her



1 answers are regionwide because -- and, Ms.  
2 Finn, correct me if I'm wrong.  
3 BY MR. WALKER:  
4 Q. When you say you were targeting groups  
5 of customers, I assume that meant throughout  
6 the region?  
7 A. That's correct.  
8 Q. Would there be any reason to target  
9 different customers in Tennessee than you would  
10 in other states?  
11 A. No.  
12 Q. Thank you.  
13 How familiar are you with the BellSouth  
14 Select program? I mean, do you -- are you  
15 generally knowledgeable about how it works?  
16 A. I wouldn't consider myself real  
17 familiar with the BellSouth Select program.  
18 Q. Okay. If you had questions about the  
19 BellSouth Select program, to whom would you go?  
20 A. I would go to Marketing.  
21 Q. Can you give me the name of an  
22 individual?  
23 A. I would go to Don Livingston.  
24 Q. Okay. And he's the witness who is  
25 testifying right after you are?

1 MR. TURNER: Yes.

2 MR. WALKER: Okay.

3 MR. TURNER: Henry, we now have a

4 copy of the fax that was attached to your

5 complaint on behalf of Access Integrated

6 Networks.

7 MR. WALKER: Good.

8 BY MR. WALKER:

9 Q. Ms. Finn, if you would take a look at

10 that, please, and I would ask you if you've

11 ever seen it before?

12 A. Yes, I've seen this.

13 Q. When was the first time you saw it?

14 A. The first time that I saw this was when

15 we received word that there was a complaint.

16 Q. How did you find out that there was a

17 complaint?

18 A. I got a message from Marketing that

19 there was a complaint on this particular

20 request.

21 Q. Okay. So at that time, you read the

22 document you're holding there?

23 A. It was after I received that

24 notification.

25 Q. Right. Do you see anything on that

1 document, Ms. Finn, that was inconsistent with  
2 BellSouth's practices and procedures that were  
3 in place at the time the offer was made?

4 A. Yes, I do.

5 Q. Please describe it.

6 MR. TURNER: Henry, if you're  
7 talking, we can't hear you.

8 MR. WALKER: No, I'm not. I asked  
9 the question, maybe the witness didn't hear me.  
10 I asked Ms. Finn to describe the  
11 inconsistencies that she observed.

12 MR. TURNER: I'm sorry, we did not  
13 hear that.

14 Ms. Finn, you can answer that  
15 question, please.

16 THE WITNESS: The inconsistency  
17 with the program surrounds the front page that  
18 says no charge for service for this particular  
19 customer.

20 BY MR. WALKER:

21 Q. Why is that inconsistent with the --  
22 with the procedures that were in place at that  
23 time?

24 A. It was my belief that the intent of the  
25 Select program was to provide Select points to

1 customers, that could be used for dollars off  
2 of their bill on the deregulated portion of  
3 their bill.

4 Q. So you were unaware that the Select  
5 program allowed you to take points off the  
6 regulated services?

7 A. That's correct.

8 Q. Did you later inquire as to whether or  
9 not the Select program allowed that or not?  
10 Let me rephrase that question, Ms. Finn.

11 You said it was your understanding that  
12 Select points could be used for discounts off  
13 the bill. When you say "discounts off the  
14 bill," are you referring to unregulated  
15 services only?

16 A. I'm referring to the unregulated  
17 services only.

18 Q. Okay. Were you aware of the fact that  
19 these -- BellSouth Select program later changed  
20 its rules and allowed you to get discounts off  
21 of regulated and unregulated services?

22 A. No, I was not aware of that.

23 Q. If you were not aware of that, how did  
24 the offer made by the Berry Direct sales  
25 representative, who would have instructed the

1 BellSouth -- excuse me -- who would have  
2 instructed the Berry Direct person to have made  
3 that offer?

4 A. I don't know who instructed the Berry  
5 Direct representative to make that offer.  
6 However, when we initially did training for  
7 this program, a copy of a training document  
8 went to Berry Direct that was incorrect, and  
9 it's quite possible that that representative  
10 used parts of that document.

11 Q. Who was responsible for the training  
12 manual?

13 A. Marketing.

14 Q. Who in Marketing?

15 A. Yes.

16 Q. I'm sorry. Any particular individual?

17 A. The training itself was conducted by  
18 Sara Ducharm.

19 Q. You will have to spell Ducharm as best  
20 you can.

21 A. I'm not sure that I know myself, but  
22 it's D-U-C-H-A-R-M.

23 Q. Is Sara with or without an H?

24 A. Without.

25 Q. When were those training materials

1 distributed, do you know?

2 A. The documents that we are talking about

3 right now was distributed prior to August 15th.

4 Q. Did you ever see those training

5 materials?

6 A. Not until I was aware of this

7 complaint.

8 Q. Why do you believe that it is improper

9 for the -- why do you believe that the training

10 materials were in error?

11 A. Because the training materials included

12 words such as "free service."

13 Q. Well, if I can redeem my bonus points

14 for discounts off of my regulated services,

15 would that be consistent with the way the

16 program was supposed to work? What's the

17 difference between that and free service? I

18 guess that's my question.

19 A. That was not my understanding.

20 Q. Well, all right, help me out here.

21 What's the difference between redeeming

22 your points for discounts off of your regulated

23 services and free service? What's the

24 difference as you understand it?

25 MR. TURNER: Henry, I'll let her

1 answer the question. I'm not sure you  
2 understand what she meant by what she just  
3 said, if you want to ask that question I'm fine  
4 with it, but I think there might have been a  
5 disconnect there.

6 BY MR. WALKER:

7 Q. Ms. Finn, I'm hearing you say the word  
8 "free service" was an inappropriate word.

9 And I guess my question is, if you can  
10 redeem your bonus points so that you're no  
11 longer paying for a regulated service, then  
12 what's wrong with calling that free service?

13 A. Sir, it was not my understanding that  
14 this program would allow or included free  
15 service off of your regulated portion of the  
16 bill. It was my understanding that this  
17 program offered Select points that could be  
18 used against the deregulated or the  
19 nonregulated portion of the bill.

20 Q. I see. Do you know whether or not at  
21 any time one could redeem Select points for  
22 cash?

23 A. For cash?

24 Q. Cash. Or a check, money?

25 A. No, I'm not aware of that.

1 Q. Who developed the training materials  
2 that you have said were erroneous? Not who  
3 administered them but who developed them?  
4 A. Marketing.  
5 Q. Who in marketing?  
6 A. I believe it was Sara Ducharm.  
7 Q. Do you know what, if any, role  
8 Mr. Livingston played in the development of  
9 those training materials?  
10 A. Sara reports to Don Livingston.  
11 Q. All right. Why do you believe that she  
12 developed it and not Mr. Livingston?  
13 A. She's a manager that works for Don, and  
14 I know that she delivered the training.  
15 Q. But my question, remember, was not who  
16 delivered it, but who prepared it? And is it  
17 your answer that Ms. Ducharm prepared it?  
18 A. I believe she prepared it.  
19 Q. And she works in Marketing and Don  
20 Livingston is her boss?  
21 A. Yes.  
22 Q. Okay.  
23 A. Not directly, but there are a couple of  
24 other managers in between.  
25 Q. Who would have been responsible for



1 reviewing these training materials to see if  
2 they complied with legal and regulatory  
3 requirements?

4 MR. TURNER: Henry, what was the  
5 first part of that question? I heard the last,  
6 but you faded out on the first.

7 BY MR. WALKER:

8 Q. Who would have been responsible for  
9 reviewing those training materials to see if  
10 they complied with regulatory and legal  
11 requirements?

12 A. Marketing would be responsible.

13 Q. Well, who within Marketing?

14 A. The organization that was delivering  
15 the training and that developed the training.

16 Q. When I say who, I'm asking for the name  
17 of a person. If you don't know, you don't  
18 know, but when I say who, I don't mean a thing,  
19 I mean a name.

20 A. I'm not sure who would be overall  
21 responsible for requiring that.

22 Q. Is it fair to assume, Ms. Finn, that  
23 you never reviewed those training materials?

24 A. That's correct.

25 MR. WALKER: I think that's all

1 Patrick. I'm going to turn it over to Nanette.

2 MS. EDWARDS: I don't have any  
3 questions.

4 MR. WALKER: Nanette says she has  
5 no questions. Chris has no questions.

6 MR. TURNER: All right, let me do  
7 this: I would like to get my notes ready, and  
8 I want to tell you what I want to do. If there  
9 is no objection from you, I want to ask Ms.  
10 Finn to step outside the room where Bert and I  
11 are sitting, put you on mute, Bert and I will  
12 figure out if there is anything we need to ask;  
13 at that point we'll put you back on and bring  
14 Ms. Finn back in the room, unless there is some  
15 objection to that.

16 MR. WALKER: No. Thank you.

17 MR. TURNER: Okay, thank y'all.

18 (Brief respite.)

19 **E X A M I N A T I O N**

20 BY MR. TURNER:

21 Q. Ms. Finn, as you know, I'm Patrick  
22 Turner, and I have just a couple of questions  
23 about what you spoke with Mr. Walker about.

24 Let me ask you this, first: Today, are  
25 third-party vendors, like Berry Direct selling,

1 the -- anything that's akin to the what has  
2 been characterized as three months of free  
3 service offering?

4 A. No, they're not.

5 Q. To the best of your knowledge, when  
6 approximately is the last date that any of  
7 these third-party vendors were selling that  
8 combined offering regarding the Select program?

9 A. I believe we discontinued as soon as we  
10 understood there was a complaint.

11 Q. Okay. Now, you mentioned Ms. Ducharm  
12 as a person who may have -- when asked who in  
13 Marketing may have done the training materials,  
14 "Ms. Ducharm" was your answer. I just want to  
15 clarify.

16 Do you know for a fact it was  
17 Ms. Ducharm or is that your best guess, given  
18 what you know about the circumstances?

19 A. That's my best guess.

20 Q. Did I hear it properly when you said  
21 that Ms. Ducharm is within Mr. Livingston's  
22 organization?

23 A. That's correct.

24 Q. So if Mr. Livingston were to name  
25 someone other than Ms. Ducharm as the person

1 who wrote those materials, would you have any  
2 reason to take issue with what Mr. Livingston  
3 said?

4 A. Not necessarily.

5 Q. Okay. As I understood what you said,  
6 there was some training materials that went to  
7 the third-party vendors, including Berry  
8 Direct, that you said described this as an  
9 offering involving free service. Do you  
10 remember that?

11 A. Yes, I do.

12 Q. Do you know whether that is the only  
13 set of training materials that was provided to  
14 the third-party vendors?

15 A. No, it's not.

16 On the day that the training was  
17 delivered, the new documents were taken to  
18 Berry Direct that did not include words such as  
19 "free service."

20 Q. Do you know whether the training  
21 materials that did mention free service, do you  
22 know whether they were delivered to Berry  
23 Direct before or after the actual training in  
24 which materials that did not include that  
25 language were used to train Berry Direct?

1 A. They were delivered before.

2 Q. So just to make sure, the training  
3 materials with the words "free service" were  
4 delivered to Berry Direct before Berry Direct  
5 was actually trained on the program in a  
6 training session, do I have that right?

7 A. That's correct.

8 MR. TURNER: Henry, that's all I  
9 have.

10 MR. WALKER: Okay. Let's go get  
11 Mr. Livingston in.

12 FURTHER DEPONENT SAITH NOT.

13

14 SWORN to before me when taken,  
15 January 14, 2002

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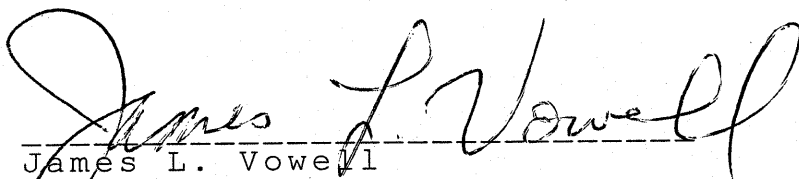
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James L. Vowell  
Notary Public  
State of Tennessee At Large  
My Commission Expires: 11/30/02